

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

DENNIS J. PICKENS,

Plaintiff,

vs.

STEVEN GARDNER AND THE LAW
FIRM OF KIPLE, DENEFE, BEAVER,
GARDNER & ZINGG, LLP; and
UNKNOWN INSURANCE COMPANY,

Defendants.

No. 4:03-cv-40477

**ORDER GRANTING
DEFENDANTS' MOTION
TO DISMISS**

This matter comes before the Court on Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. Plaintiff Dennis Pickens brings this action against Defendants Steven Gardner and the law firm of Kiple, Deneffe, Beaver, Gardner & Zingg, LLP, and their insurance carrier alleging several state tort causes of action. Plaintiff Pickens is acting pro se in this matter; Defendants are represented by attorney John McClintock. The parties have not requested a hearing, nor does the Court deem one necessary. The Motion is fully submitted and ready for ruling.

FACTS

Pickens brings this action alleging Gardner negligently represented him in an employment discrimination action brought under the Americans with Disabilities Act. That case resulted in a four-day trial, post-trial judgment as a matter of law, and an Eighth Circuit affirmance on appeal. Pickens v. Soo Line R.R. Co., 264 F.3d 773,

775-76 (8th Cir. 2001). The following are background facts pertinent to the matter presently before the Court.

Plaintiff Pickens (“Pickens”) worked for Soo Line Railroad (“Soo Line”) for approximately twenty years when he suffered a work-related injury on October 14, 1992. As a result of that injury, Pickens filed a Federal Employer’s Liability Act (“FELA”) claim which went to trial in March 1996. The jury awarded Pickens over \$365,000 in past and future damages.

On October 25, 1995, during the pendency of the FELA case, Pickens returned to work at Soo Line on an accommodated schedule.¹ In the summer of 1996, Pickens alleges he wrote a letter to “clarify” his accommodation status; however, Soo Line

¹ After an initial unsuccessful attempt to return to work following his injury, Pickens was unable to work for three years; during that time he received disability benefits. Pickens, 264 F.3d at 775. When Pickens returned to work in October 1995, he was on a medical restriction which limited him to no more than an eight-hour work day; therefore, he was unable to resume his duties as a conductor. Id. Soo Line offered him a job as switchman, but after three days Pickens determined it was too strenuous and asked to return to his “road” position. Id. At his request, Pickens’ physician lifted the eight-hour per day work restriction, and Pickens returned to his full-time conductor duties. Id. After four months, he found it was too strenuous and asked his physician to impose medical restrictions; his physician refused. Id. Pickens began exercising his right to “lay off” under the collective bargaining agreement which allowed him to withdraw his name from the conductor assignment list and take vacation, sick leave, or personal time. Id. at 775 n.3. In the spring of 1996, following a “lay off”, Soo Line required Pickens to get a medical status report before returning to work. Id. at 776. Although Pickens’ physician determined he was unable to return to full-time employment, at Pickens’ insistence, his physician falsely reported that Pickens could return to full-time employment. Id. Pickens continued to take lay offs and then obtain medical releases to return to work. Id.

perceived the letter as threatening and removed Pickens from service on August 16, 1996. Pickens was eventually terminated on October 4, 1996.

Believing he was the target of animus, harassment, retaliation, and discrimination, Pickens pursued legal action against Soo Line. On March 3, 1997, Pickens hired attorney Defendant Steven Gardner (“Gardner”) to represent him in a wrongful discharge action against Soo Line under the Americans with Disabilities Act (“ADA”), the Iowa Civil Rights Act (“ICRA”), and other state tort causes of action. The action resulted in a four-day trial in June 1999, but only the ADA claim was submitted to the jury. The jury found Soo Line violated provisions of the ADA and awarded Pickens over \$620,000 in damages. However, Soo Line filed a post-trial Motion for Judgment as a Matter of Law (“JAML”) pursuant to Federal Rule of Civil Procedure 50(b). The court granted the motion reasoning that at the time Soo Line terminated Pickens, he was not a “qualified person” within the meaning of the ADA, and therefore the jury award could not stand as a matter of law.

Pickens’ counsel appealed the district court’s decision alleging the court erred by (1) granting the JAML; (2) refusing to submit the ICRA claim to the jury; (2) rejecting his judicial estoppel claim; and (4) refusing to allow evidence from the FELA trial. In a two-to-one decision, the Eighth Circuit Court of Appeals panel affirmed the district court’s decisions.

Pickens brings the present federal court action against attorney Gardner and his law firm alleging several state tort causes of action including legal malpractice, lack of

informed consent, negligence, breach of express contract, breach of implied contract, breach of fiduciary duty, conflict of interest, negligent misrepresentation, concealment, negligent infliction of emotional distress, and defamation of character.

Pickens and Gardner are citizens of Iowa; therefore, this Court does not have diversity jurisdiction over this matter. Nonetheless, Pickens argues this Court has federal question jurisdiction because the underlying lawsuit which gave rise to the present action was brought under the ADA. Defendants challenge Plaintiff's jurisdictional assertions arguing the ADA does not provide federal jurisdiction in the present case, and therefore the Court should grant its motion to dismiss.

STANDARD FOR THE MOTION

“Jurisdictional issues, whether they involve questions of law or of fact, are for the court to decide. . . . [J]udicial economy demands that the issue be decided at the outset rather than deferring it until trial” Osborn v. United States, 918 F.2d 724, 729 (8th Cir. 1990) (citation omitted). “[Federal courts] possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994) (citations omitted); V S Ltd. P’ship v. Dep’t of Hous. & Urban Dev., 235 F.3d 1109, 1112 (8th Cir. 2000) (“The burden of proving subject matter jurisdiction falls on the plaintiff.”).

DISCUSSION

In resistance to Defendants' motion to dismiss, Pickens argues a federal question is present because a necessary element of his malpractice claim is the merits of his underlying ADA case. See Blackhawk Bldg. Sys. Ltd. v. Law Firm, 428 N.W.2d 288, 290 (Iowa 1988) ("In an action based upon the negligent handling of a law suit, the plaintiff must prove that absent the lawyer's negligence, the underlying suit would have been successful."). Pickens asserts that when an underlying claim involves a federal question, the "case-within-a-case" doctrine applies. Pickens further argues that because he is acting pro se, the Court must liberally construe his pleadings. Although Pickens correctly states black letter law, he incorrectly applies the law to the facts of this case, and therefore his arguments fail.

First, the Court does in fact have a duty to liberally construe the pleadings of a pro se litigant. Haines v. Kerner, 404 U.S. 519, 520-21 (1972). However, that mandate does not empower the court to hear a matter over which it does not have jurisdiction. See, e.g., Holmes v. Morics, 1994 WL 759660 at *1 (D. Minn. Nov. 3, 1994) (reasoning that regardless of plaintiff's pro se status and the liberal construction allowed his complaint, the court lacked subject matter jurisdiction over the case).

Federal courts are courts of limited jurisdiction and may only hear cases if diversity of citizenship or a federal question exists. Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). "The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when

a federal question is presented on the face of the plaintiff's properly pleaded complaint." Id.

In the present case, diversity of citizenship is lacking; therefore, the only way this case is properly in federal court is if a properly pleaded federal question provides the court jurisdiction. "To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action." Gully v. First Nat. Bank, 299 U.S. 109, 113 (1936). It is clear from the face of Pickens' complaint that he alleges only state tort causes of action against the Defendants. Although reference to an underlying federal question case or federal statute might arise during litigation, this is not enough to satisfy the well-pleaded complaint rule. Merrell Dow Pharm. Inc. v. Thompson, 478 U.S. 804, 813 (1986) ("[T]he mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction.").

Second, in support of his argument that federal jurisdiction exists, Pickens cites Riccio v. Gray, 852 F. Supp. 5, 6 (S.D.N.Y. 1993), and states that under the "case-within-a-case" doctrine, the underlying claims are clearly embodied in a malpractice claim.² In Riccio, the plaintiff brought an action in federal court seeking to vacate an

² Pickens also cites Wastvedt v. Vaaler, 430 N.W.2d 561, 567 (N.D. 1988), arguing the "case-within-a-case" doctrine applies in cases where negligently-conducted litigation is alleged. In Wastvedt, the state court merely explained that the case-within-a-case doctrine "applies to allegedly negligently conducted litigation and requires that but for the attorney's alleged negligence, the litigation would have terminated in a result more favorable for the client." Id. Subject matter jurisdiction was not an issue in Wastvedt.

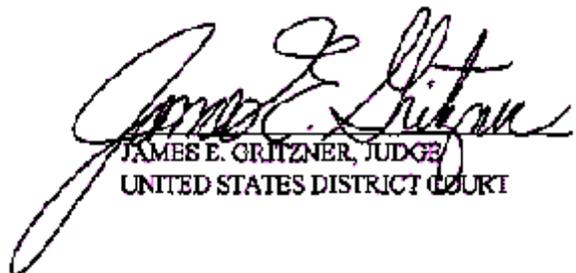
arbitration award pursuant to the Federal Arbitration Act (“FAA”). Riccio, 852 F. Supp. at 6. Contrary to Pickens’ assertion, the district court in Riccio reasoned that the FAA *did not* provide the court with subject matter jurisdiction to vacate the award, and therefore the court dismissed the case. Id. Similarly, in the present case, although Plaintiff alleges the Defendants negligently represented him in a federal question case, the subject matter jurisdiction of that underlying case cannot be extended to a subsequent malpractice action. The present case must provide an independent basis for federal court jurisdiction, and it does not.

CONCLUSION

For the aforementioned reasons, the Court finds subject matter jurisdiction is lacking in the present case. Therefore, Defendants’ Motion to Dismiss (Clerk’s No. 2) must be **granted**.

IT IS SO ORDERED.

Dated this 3rd day of December, 2003.



JAMES E. GRITZNER, JUDGE
UNITED STATES DISTRICT COURT